IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2476 OF 2006

Ganpat Waman Jadhav ..Petitioner

Vs.

1. Deputy Superintendent of Police CBI, EOW, Unit-VII, New Delhi, and ors. ..Respondents

Mr. I.A. Bagaria for petitioner.
Mr. P.D. Gharat, Spl. P.P. for CBI.
Mr. A.S. Shitole, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 25, 2007.

P.C.:

1. This writ petition under Article 227 of the Constitution arises from the order dated 18/10/2006 passed by the learned Special Judge in Misc. Application No. 678 of 2006 filed in Sessions Case No. 550 of 2006 by the present petitioner. By the said order the Misc. Application No. 678 of 2006, moved for exclusion of the confessional statement of accused no.1 - Abdul Karim Telgi from the material proposed for framing of the charges in Sessions Case

No. 550 of 2006, has been rejected.

2. In the famous Telgi fake stamp scam cases, on filing of three charge-sheets, Sessions Case Nos. 756/03, 757/03 and 849/03 came to be registered before the Special Judge. On 26/9/2003 Special Investigation Team (SIT) came to be appointed vide a Government Resolution and this court passed an order directing the State Government to look into the role of certain police officers. The petitioner came to be arrested on 24/12/2003 by the SIT and he was released on bail by the Sessions Court on 22/3/2004. First charge-sheet was filed against the petitioner on 22/3/2004 though no sanction under Section 197 of Cr.P.C. was obtained for the same and the case was committed on 10/6/2004 and registered as Sessions Case No. 458 of 2004. On 15/3/2004 the investigation came to be transferred to the CBI as per the order passed by the Supreme Court of India. Sanction under Section 197 of Cr.P.C. was granted for the prosecution of the petitioner on 24/9/2004. The CBI submitted the final report after investigation as per the order of the Supreme Court, on 3/10/2005. As per the petitioner, CBI has recommended charges to be framed against him

only under Sections 218 and 221 of IPC. On 7/11/2005 process was issued by the learned Additional Chief Metropolitan Magistrate summoning him to remain present on 10/11/2005 and cognizance was taken and thus enquiry was started. On 31/1/2006 the main accused Telgi made an oral application for recording the confessional statement and the learned Special Judge directed the Chief Judicial Magistrate to record the statement, which came to be recorded on 4/2/2006 in Sessions Case No. 753 of 2003. Based on some disclosures made in the said confessional statement, charge-sheet came to be filed by the CBI against the petitioner on 30/6/2006 in Sessions Case No. 550 of 2006 and on 21/7/2006 the charge-sheet filed in Sessions Case No. 550 of 2006 came to be merged along with Sessions Case Nos.753/03, 756/03, 757/03, 849/03 and 458/04.

3. On 21/7/2006, the prosecution moved an application to club Sessions Case No. 550/06 with part heard trial case Nos.111/04 and 112/04 and the said application was allowed on 26/7/2006. On 3/10/2006 the petitioner filed Misc. Application No. 678 of 2006, inter alia, praying for direction to

exclude the confessional statement of main accused Telgi for the purpose of framing of charge and the trial against the petitioner and also for directions to exclude the material which is not forming part and parcel of record of committal proceedings after filing of the charge-sheet by CBI for the purpose of framing of the charge and the trial against him. The said application has been rejected by the impugned order.

4. The learned counsel for the petitioner referred to the scheme of Section 164 of Cr.P.C. and submitted that confessional statement can be recorded only before the commencement of the enquiry and in the instant case the enquiry has commenced on 7/11/2005 when the Addl. Chief Metropolitan Magistrate was pleased to issue process against the petitioner. It was further submitted that once the CBI had filed the charge-sheet on 30/6/2006 and it was merged into one charge-sheet along with the other Sessions Cases on 21/7/2006, it was not permissible for the learned Special Judge to pass an order allowing the oral application of Telgi so as to record his confessional statement. On submission of the charge-sheet by the CBI, the enquiry contemplated under Section 2(g) of

Cr.P.C. had commenced and in any case the main accused did not make any such request for recording of his confessional statement to the CBI or the committing Magistrate before whom the matter was pending for the purpose of committal. In support of these arguments the learned counsel has placed reliance on the following decisions:-

(a) State of U.P. vs. Lakshmi Brahman and anr. [AIR 1983 SC 439].

(b) Mahabir Singh vs. State of Haryana [AIR 2001 SC 2503].

5. The learned Special Judge, in the impugned order, noted that when the confessional statement of the main accused was recorded the committal proceedings before the learned Addl. Chief Metropolitan Magistrate had not commenced in as much as he had not applied his mind to the material placed before him for the purpose of committing the case i.e. S.C. No.550/06 to the Special Court and, therefore, the said case was not before the learned Special Judge

on the day the oral application made by the main accused was allowed. The Special Court had not embarked upon any enquiry as envisaged under Section 227 and 228 of Cr.P.C. for framing of charges on the day the order was passed. Section 2(g) of Cr.P.C. defines enquiry as every enquiry other than a trial conducted under the said Code by a Magistrate of Court and thus a distinction is clearly made between the term "enquiry" and "trial". Section 164(1) of Cr.P.C. reads as under:-

> "Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any law for the time being in force, or at any time afterwards before the commencement of the enquiry or trial-
>
> Provided that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force."

. Subsections 2 to 4 of Section 164 of the Code set out the procedure to be adopted by the Magistrate in recording the confession. Subsection 5 of Section 164 prescribes method of recording any statement other than confession and subsection 6 requires the Magistrate recording confession or statement to send it to the Magistrate (Court) by whom the case is to be enquired into or tried. The learned trial Judge, therefore, held that it is not essential for the Magistrate recording confession to have jurisdiction in the case. In para 13 of the impugned order the learned Special Judge stated,

> "13. As observed herein above, no effective enquiry for committing the case investigated by CBI or for framing the charges, or the trial before this Court had commenced at the time of recording confession of the Accd. No.1-Telgi and, therefore, no violation of this simple principle of law which would result or has resulted in denial of fair trial to the accused, is seen."

7. As noted in the scheme of Section 164(1) two distinct words have been used, namely, "enquiry" and "trial". The recording of confessional statement has to be before the enquiry or the trial commences. The learned counsel for the petitioner in his lengthy arguments before me appeared to have forgotten the word "trial" appearing in Section 164(1) of Cr.P.C. Even otherwise when the learned Special Judge allowed the oral application on 31/1/2006 the committal order was not passed and the same order has been passed subsequently on 30/6/2006 and, therefore, Sessions Case No. 550 of 2006 was not registered before the learned Special Judge when the oral application was allowed for recording of confessional statement. The enquiry before the Special Court would start on framing of the charge and that stage had yet to come. In addition, the recording of confession can be allowed either before the enquiry commences or before the trial commences and, admittedly, the trial had not commenced even when the petitioner moved Misc. Application No. 678 of 2006 on 3/10/2006.

8. As regards the invoking of provisions of the Prevention of Corruption Act, 1988 which was also

sought to be agitated, if the incident disclosed in the charge-sheet made out a prima facie case for offences under the said Act, it was the duty of the Prosecutor to invoke such provisions. No exception, therefore, can be taken to invoking of the provisions of the said Act. In both the decisions relied upon by the learned counsel for the petitioner, the recording of confessional statement was considered prior to the stage of commencing the enquiry. The enquiry that is relevant in the instant case is the enquiry by the Special Court and as noted earlier it had not even received the committal order when the oral application of Telgi was allowed. At this stage, it would be relevant to reproduce the following observations made by their Lordships in the case of Lakshmi Brahman (Supra):-

> "...The making of an order committing the accused to the Court of Sessions will equally be a stage in the inquiry and the inquiry culminates in making the order of commitment...".

9. In the premises, I do not find any error apparent on the face of the record in the impugned order and the well reasoned order passed by the learned Special Judge calls for no interference and, therefore, the petition must fail at the threshold.

The same is hereby rejected summarily.

(B.H. Marlapalle,J.)